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January 12, 2022

VIA ECF

Honorable Cecelia G. Morris, Chief Judge
United States Bankruptcy Court
Southern District of New York
One Bowling Green, Room 627
New York, NY 10004-1408

Re: *Picard v. Frank J. Avellino, et al., Adv. Pro. No. 10-05421 (CGM)*

Dear Chief Judge Morris:

We are counsel to Irving H. Picard, trustee (the “Trustee”) for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and the chapter 7 estate of Bernard L. Madoff (“Madoff”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa–III. This letter is submitted jointly by the parties in response to Your Honor’s request at the pretrial/Rule 7056-1(a) conference held on December 15, 2021, that the parties identify the Counts and Defendants remaining in the above-referenced adversary proceeding subsequent to the Court’s July 2016 decision on Defendants’ motion to dismiss, *Picard v. Avellino et al.*, 557 B.R. 89 (Bankr. S.D.N.Y. 2016) [ECF No. 117] (the “MTD Decision”), and the specific Counts and Defendants against whom summary judgment would be based.¹

As will be explained more fully below, only three of the Defendants – Avellino & Bienes, Avellino Family Trust, and Avellino & Bienes Pension Plan & Trust – are no longer Defendants in this proceeding as a result of the MTD Decision, and all thirteen Counts in the Amended Complaint remain. Additionally, the Trustee has dismissed one Defendant, “A minor with the initials S.A.,” and substituted Defendant Michael S. Bienes after his death.

¹ The Trustee’s letter dated December 8, 2021 seeking leave to file a summary judgment motion is located at ECF No. 223, and Defendants’ letter dated December 9, 2021 is located at ECF No. 225.

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Remaining Counts and Defendants:

The Trustee commenced this “bad faith” adversary proceeding seeking to avoid and recover fraudulent transfers of principal and fictitious profits received by the Defendants, and to disallow and/or subordinate certain of the Defendants’ claims. The Amended Complaint was brought against thirty-five individuals and related entities who, over the course of their near forty-year relationship with BLMIS, received more than \$900 million in initial transfers, and over \$100 million in subsequent transfers. The Trustee alleged thirteen Counts against these Defendants in the Amended Complaint.

All thirteen Counts survived the Defendants’ motion to dismiss, but the MTD Decision limited the fraudulent transfers for which the Trustee could avoid and recover to those that occurred on or after January 2001.² As a result of the MTD Decision, the following three Defendants are no longer part of this adversary proceeding:

- Avellino & Bienes
- Avellino Family Trust
- Avellino & Bienes Pension Plan & Trust

Separately, the Trustee has since: (i) substituted Defendant Michael S. Bienes with the Estate of Michael S. Bienes, and Dianne K. Bienes, in her capacity as Personal Representative for the Estate of Michael S. Bienes; and (ii) dismissed “A minor with the initials S.A.” *See* Stipulation and Order for Substitution of the Estate of Michael S. Bienes and Dianne K. Bienes, in Her Capacity as Personal Representative of the Estate of Michael S. Bienes, in Place of Deceased Defendant Michael S. Bienes, dated November 16, 2017 [ECF 170]; Stipulation and Order Dismissing Defendant [S.A.], dated February 1, 2019 [ECF 183].

Accordingly, thirty-one Defendants remain in this action. For the Court’s convenience, the parties have prepared two charts, **Exhibit A (organized by Counts) and Exhibit B (organized by each Defendant)**, which identify the remaining Defendants and the Counts of the Amended Complaint which remain pending against them.

The Trustee’s Request for Leave to File a Motion for Summary Judgment

The Trustee seeks leave to file a motion for partial summary judgment on Count I against Defendants Mayfair Ventures, G.P., Grosvenor Partners, Ltd., Aster Associates and St. James Associates pursuant to Bankruptcy Code §§ 548(a)(1)(A) and 550 to avoid and recover intentionally fraudulent transfers constituting \$17.2 million in fictitious profits made to each of these Defendants between December 11, 2006 and December 11, 2008 (the “Two-Year Period”), plus prejudgment interest.³ The Trustee also intends to seek summary judgment pursuant to

² The Trustee reserves his rights to appeal the Court’s MTD Decision.

³ Specifically, the Trustee seeks to recover fictitious profit transfers made in the Two-Year Period to Mayfair Ventures, G.P. of \$2.5 million; Grosvenor Partners, Ltd. of \$2.5 million; Aster Associates of \$3.5 million, and St. James Associates of \$8.7 million.

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Count XIII (General Partner Liability) against the following related general partner Defendants, whom he alleges are liable for a judgment secured against the above-listed entity Defendants (*see Exhibit C*):

- Frank J. Avellino
- Nancy C. Avellino
- Estate of Michael S. Bienes
- Dianne K. Bienes, Individually and in Her Capacity as Personal Representative of the Estate of Michael S. Bienes
- Thomas Avellino
- Mayfair Ventures, G.P.
- 27 Cliff LLC
- Rachel A. Rosenthal
- Rachel Anne Rosenthal Trust U/A dated June 29, 1990
- Rachel Rosenthal Trust Number 3
- Heather C. Lowles
- Heather Carroll Lowles Trust U/A dated June 29, 1990
- Tiffany Joy Lowles Trust U/A dated June 29, 1990
- Melanie Ann Lowles Trust U/A dated June 29, 1990
- Taylor Ashley McEvoy Trust U/A dated June 24, 1992
- Madison Alyssa McEvoy Trust U/A dated June 29, 1990
- S.A. Grantor Retained Annuity Trust

The Defendants' Request for Leave to File a Motion for Summary Judgment

Defendants have decided not to seek leave to file a motion for summary judgment at this time.

The parties will be prepared to discuss the above at the next scheduled conference on January 19, 2022.

Sincerely,

/s/ Regina Griffin

Regina Griffin
Partner

cc: Gary A. Woodfield, Esq.